LOUISIANA: A FORUM, CONVENIENS VEL NON*

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As A Moth Is Drawn To The Light, So A Litigant Is Drawn To the United States.¹

In May of 1980 two Greek seamen were killed in an accident which occurred in the Russian port of Leningrad, aboard a Greek flag vessel owned by a Liberian corporation whose principal place of business was Monrovia, Liberia. All the shareholders, directors and officers of the Liberian corporation were Greek citizens, residents of Greece or Saudi Arabia. The survivors of those seamen, all of whom were Greek citizens residing in Greece, brought a damage suit in a Louisiana state court against the vessel owner, the vessel’s agent (a Panamanian corporation also owned by Greek citizens, with its principal place of business in Greece), and a New York corporation which had also performed some agency services for the vessel. Kassapas v. Arkon Shipping Agency, Inc.² Plaintiffs asserted claims under the Jones Act³ and general maritime law. None of the parties had ever set foot in Louisiana. When the vessel arrived to discharge cargo at a dock near New Orleans, plaintiffs attached the vessel in Louisiana (causing the owners to post a release bond) and thereby obtained quasi in rem jurisdiction⁴ in Louisiana state court. The trial court granted defendants’ motion to dismiss on the basis of forum non conveniens. The court of appeal reversed, holding that a Louisiana court has no authority to dismiss for forum non conveniens a case over which it has jurisdiction. Because Louisiana has no clear statutory basis for the application of the well-recognized doctrine of forum non conveniens, Louisiana state courts must extend the welcome mat for this and other such suits by foreigners. This imposes further burdens on crowded dockets and considerable expense on taxpayers, and subjects defendants who do business in Louisiana (either unwarily or of necessity) to significant litigation expense and liability exposure.

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⁴ La. Code Civ. P. arts. 9, 3541(5), and 3542.
This article will review briefly the history of the doctrine of forum non conveniens in courts in the United States, and the principles which guide its application. The Kassapas decision precluding dismissal for forum non conveniens by Louisiana courts will be examined in detail, as well as earlier Louisiana cases to the contrary. Several problems implicit in the unavailability of the doctrine in Louisiana will be considered. Is a forum non conveniens dismissal by one court binding upon another in which the same suit is filed later? Must state courts apply federal law in maritime cases? Should federal courts apply state law in diversity cases? Arguments will be advanced to the effect that the Kassapas decision should be overruled, either by the Louisiana Supreme Court or the Louisiana Legislature. A plea will be made for consistency in application of the doctrine of forum non conveniens to eliminate bizarre results which now follow from the lack of uniformity.

HISTORICAL DEVELOPMENT

A brief history of the doctrine of forum non conveniens in the United States should be of assistance in further analysis of the situation in Louisiana. In an admiralty salvage case decided a few years after the establishment of federal courts,5 Chief Justice Marshall discussed the question of whether "upon principles of general policy, this court ought not to take cognizance of a case entirely between foreigners . . . ."6 Because the considerations in favor of "public convenience" appeared "much to overbalance those against it,"7 the Court decided to exercise jurisdiction, especially because the parties assented to it. In a case involving a collision of two vessels at sea eighty years later, Justice Bradley discussed at length the principles which today are referred to as forum non conveniens:

Not alone, however, in cases of complaints made by foreign seamen, but in other cases also, where the subjects of particular nation invoke the aid of our tribunals to adjudicate between them and their fellow subjects, as to matters of contract or tort solely affecting themselves and determinable by their own laws, such tribunals will exercise their discretion whether to take cognizance of such matters or not.8

The principle that in a suit in admiralty between foreigners it is ordinarily within the discretion of a trial court to refuse to exercise jurisdiction

5. Judiciary Act of 1789, 1 Stat. 73.
7. Id.
became well imbedded. It was applied to causes of action arising on the high seas as well as to those in United States waters. 9 "[T]he bare circumstance of where the cause of action arose is not determinative of the power of the court to exercise discretion whether to take jurisdiction." 10 Not only admiralty courts but courts of equity and of law also occasionally declined, in the interest of justice, to exercise jurisdiction in suits between aliens or nonresidents, or where other circumstances indicated that the litigation could be conducted more appropriately in a different court. 11 The following statement in a stockholder's action brought in New York to enjoin a New Jersey corporation's employee stock subscription plan is typical:

While the District Court had jurisdiction to adjudge the rights of the parties, it does not follow that it was bound to exert that power. Canada Malting Co. v. Paterson Co., 285 U.S. 413, 422, 52 S.Ct. 413, 76 L. Ed. 837, and authorities cited. It was free in the exercise of a sound discretion to decline to pass upon the merits of the controversy and to relegate plaintiff to an appropriate forum. 12

It was not until 1947, in the oft-cited case of Gulf Oil Corp. v. Gilbert, 13 that the United States Supreme Court, in a five to four decision expressly approved the application of forum non conveniens to actions at law. Gilbert was a diversity jurisdiction (state law) case brought in the federal district court in New York to recover damages for the destruction of plaintiff's warehouse in a fire which occurred in Virginia. Gilbert was not a resident of New York, and Gulf was a Pennsylvania corporation. No event connected with the case took place in New York, and no witnesses except perhaps experts lived there. The district court granted a forum non conveniens motion and dismissed the suit, holding that the case should be litigated in Virginia, where the claim arose. The court of appeals reversed. The Supreme Court reinstated the district court judgment: The federal district court had inherent power to dismiss the suit based on forum non conveniens, and in doing so it did not abuse its power. Because the factors which the Court listed forty years ago as bearing upon the forum non conveniens decision still guide trial courts' discretion today, they are quoted here in full:

10. Id. at 422, 52 S. Ct. at 415.
If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.14

The next important U.S. Supreme Court decision involving forum non conveniens after Gulf Oil Corp. v. Gilbert is a fairly recent one, Piper Aircraft Co. v. Reyno.15 As it had done in Gulf Oil Corp. v. Gilbert, the Court granted certiorari to review a court of appeals decision reversing a district court's judgment dismissing a case under forum non conveniens principles; once again the Court reversed the court of appeals. The forum non conveniens determination is committed to the sound discretion of the trial court. It may be reversed only when there has

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14. Id. at 508-09, 67 S. Ct. at 843 (footnote omitted).
been a clear abuse of discretion." Piper Aircraft is important in two other respects: It reaffirmed the private interest/public interest factors enumerated in Gulf Oil Corp. v. Gilbert, and it specifically rejected the court of appeals’ reasoning that substantial weight should be given to the possibility of a change of law unfavorable to plaintiff resulting from the "transfer" of the case to a foreign nation.

Piper Aircraft was a suit to recover damages for the survivors of Scottish citizens killed in a plane crash in Scotland; Scotland was the appropriate forum even though Scottish law was less favorable to the plaintiffs.

As if anticipating the Bhopal Union Carbide litigation discussed hereafter, Justice Marshall in Piper Aircraft stressed that, if a change of law unfavorable to plaintiff would preclude a forum non conveniens dismissal, "American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts."

Kassapas

It is clear from the foregoing discussion of federal forum non conveniens law that if the plaintiffs in Kassapas had brought suit in the U.S. district court instead of the state court, the federal court would certainly have taken the same action which the state trial judge did; it would have dismissed on the ground of forum non conveniens subject to stated conditions: that the plaintiffs have the right to sue in a Greek court within a designated period of time, that defendants submit to the jurisdiction of the Greek court and agree to be served with process from that court, and that defendants waive any otherwise applicable statute of limitations.

Plaintiffs' counsel wisely chose to bring his clients' Jones Act and general maritime law claims in state court, protected from removal to federal court. Notwithstanding federal question jurisdiction, Jones Act cases are not removable to federal court because the Jones Act adopts

16. Id. at 257, 102 S. Ct. at 266.
17. Id. at 252, 102 S. Ct. at 264 (footnote omitted).
by reference the prohibition against removal contained in the Federal Employer's Liability Act.\textsuperscript{20}

In reversing the trial court's forum non conveniens dismissal, the Louisiana court of appeal reasoned that article 123 of the Louisiana Code of Civil Procedure, the only statute on the subject, is limited to intrastate transfers and does not authorize forum non conveniens dismissal when the alternative forum is not a Louisiana court. Governed by principles of civil law, the court held that it would be "usurping legislative authority" to sanction "the common law doctrine of forum non conveniens."\textsuperscript{21} The Louisiana Supreme Court declined to review the court of appeal's decision, making no comment other than that three of the seven justices "would grant the writ."\textsuperscript{22} The U.S. Supreme Court denied certiorari without comment.\textsuperscript{23}

The \textit{Kassapas} opinion treats two similar but quite different concepts, which unfortunately sometimes bear the same name, as if they are one. Transfer from one state court of proper venue to another more convenient state court of proper venue within the same state is quite different from a dismissal because no court in the state is a convenient forum. Within the federal system, transfer from one U.S. district court of proper venue to another more convenient one\textsuperscript{24} is quite different from a dismissal on the ground that no United States district court is a convenient forum.\textsuperscript{25} There is overlap in the factors involved in deciding: (a) whether a case should be transferred from one court to another within a judicial system, or (b) whether a case should be dismissed for forum non conveniens because no court in the state or nation in whose system it was filed is a convenient forum. However, the principles which control are not identical.\textsuperscript{26} The court's authority for intrasystem transfer is usually statutory; authority for forum non conveniens dismissal is typically inherent.

It is submitted that the Louisiana court of appeal in \textit{Kassapas} erred in rejecting forum non conveniens as a "common law doctrine," rather than applying it as an inherent right of every court to decline jurisdiction


\textsuperscript{21} \textit{Kassapas}, 485 So. 2d at 566.

\textsuperscript{22} \textit{Kassapas v. Arkon Shipping Agency, Inc.}, 488 So. 2d 203 (La. 1986).

\textsuperscript{23} \textit{Kassapas v. Arkon Shipping Agency, Inc.}, 107 S. Ct. 422 (1986).

\textsuperscript{24} 28 U.S.C. § 1404(a) (1982).

\textsuperscript{25} See \textit{Cowan v. Ford Motor Co.}, 713 F.2d 100 (5th Cir. 1983).

\textsuperscript{26} In \textit{Norwood v. Kirkpatrick}, 349 U.S. 29, 75 S. Ct. 544 (1955), the Supreme Court stressed that a U.S. district judge has broader discretion in deciding to transfer a case under 28 U.S.C. § 1404(a) to a more convenient venue than in deciding whether to dismiss under the doctrine of forum non conveniens.
in appropriate circumstances. The doctrine originated at least in name in Scotland, a civil law jurisdiction. Scholars have considered the legal systems of Scotland and Louisiana as closely akin “mixed jurisdictions,” both with a Romanistic civil law system overlaid to some extent by Anglo-American common law. While courts, including the Supreme Court of the United States, have referred to forum non conveniens as a common law doctrine, to distinguish it from rules which have their basis in legislation, it is submitted that the common law/civil law distinction is inappropriate. All courts, whether in common law or civil law jurisdictions, possess inherent authority to decline to exercise jurisdiction where its exercise would result in abuse. It was on this basis that two early cases in Louisiana, referred to hereafter, applied the doctrine and dismissed cases over which there was jurisdiction.

The Kassapas opinion makes no reference to these two early Louisiana cases, but it does cite two others, Smith v. Globe Indemnity Co. and Symeonides v. Cosmar Compania Naviera, as having “indicated in dicta that forum non conveniens, transfer or dismissal beyond the narrow confines of La. Code Civ. P. art. 123 might be available.” Both of them deal with potential dismissal, not intrastate transfer to a more convenient venue. While both decisions decline dismissal, both do so only after concluding that dismissal for forum non conveniens is an available remedy in Louisiana courts but not appropriate under the particular circumstances.

Smith was a resident of Louisiana when he filed suit against his former employer's insurer, to recover workmen's compensation benefits under the Tennessee statute, for injuries received in an accident which occurred in Tennessee. The court concluded that “the exercise of jurisdiction herein is a matter of judicial discretion” and that it was “appropriate to apply the doctrine of forum non conveniens in determining whether jurisdiction should be assumed herein.” The court then referred to the seminal federal case on forum non conveniens, Gulf Oil Corp. v. Gilbert. After analyzing the factors which a trial court should

30. Stewart v. Litchenberg, 148 La. 195, 86 So. 734 (1940); Union City Transfer v. Fields, 199 So. 206 (La. App. 1st Cir. 1940).
31. 243 So. 2d 882 (La. App. 1st Cir. 1971).
34. Smith, 243 So. 2d at 889.
35. Id.
consider, as set forth by the Supreme Court in Gilbert, the Louisiana court of appeal decided not to dismiss on forum non conveniens but instead to assume jurisdiction.

The plaintiff in Symeonides was the representative of the estate of a Greek seaman who was killed in an accident aboard a Greek flag vessel owned by a Panamanian corporation. But, unlike the situation in Kassapas, his claim had some relationship to Louisiana: the accident which caused the seaman's death occurred while the vessel was in a Louisiana port. Another seaman injured in the same accident had filed suit in federal district court. The Louisiana court of appeal took note of the fact that the federal suit "was transferred to Greece based on forum non conveniens" and indicated that the same result would probably have been reached in the state court had the defendants not lost their right to raise the forum non conveniens issue "through their knowing and blatant disobedience of valid court orders." Because of the repeated refusal of those with interests in the vessel to respond to discovery and other court orders, the trial court imposed sanctions pursuant to article 1471 of the Louisiana Code of Civil Procedure, which is patterned after Rule 37(b) of the Federal Rules of Civil Procedure. As a result, defendants lost their opportunity to urge dismissal on the basis of forum non conveniens. Moreover, because some of the discovery was directed to information which could have affected choice of law issues, the court struck the vessel interests' defense that Greek law should apply. As a result, plaintiff recovered under the Jones Act. It is clear that had the Greek law defense not been struck as a sanction, the Louisiana court should have applied Greek law, not the Jones Act.

After rejecting the reasoning in support of the inherent authority of Louisiana courts to dismiss on forum non conveniens grounds, the Kassapas opinion relies upon another court of appeal decision, Trahan v. Phoenix Insurance Co., for its conclusion that application of the doctrine of dismissal for forum non conveniens would "constitute judicial legislation of the rankest sort." However, Trahan did not involve a true forum non conveniens issue. The court of appeal in Trahan reversed a trial court's order transferring the case from one Louisiana district

38. See Volyrakis v. M/V Isabelle, 668 F.2d 863 (5th Cir. 1982).
39. Symeonides, 433 So. 2d at 287.
40. Id.
42. 200 So. 2d 118, 122 (La. App. 1st Cir.), writ denied, 202 So. 2d 657 (1967).
43. Id. at 122.
court of proper venue to another one of more convenient venue. The
trial court had ordered the intrastate transfer "for the sole purpose of
serving the convenience of the court, litigants or witnesses, under the
common law doctrine of 'forum non conveniens."" Trahan was decided
before the adoption of article 123 of the Louisiana Code of Civil
Procedure; indeed, article 123 was "[a]dded on the recommendation
of the Louisiana State Law Institute to overcome the holding" in Trahan.

Trahan was apparently the first reported Louisiana decision dealing
with intrastate transfer to a more convenient venue. The decision is
well-reasoned. When the Louisiana Legislature adopted the Code of Civil
Procedure in 1960, it included an article authorizing change of venue
upon proof that a party cannot obtain a fair and impartial trial. The
Code established proper venue in more than one parish for many types
of suits; it did not authorize the courts to disturb plaintiff's choice
among them except to insure a fair trial, not for the convenience of
witnesses or the parties. For the courts to assume that power under
those circumstances would indeed constitute rank judicial legislation. The
court in Kassapas rejected as dicta the reasoning in Smith and
Symeonides in support of a Louisiana court's inherent authority to
dismiss a suit conditionally for forum non conveniens. The Kassapas
opinion erroneously relied upon Trahan, which rejected a motion to
transfer to a more convenient venue, not a motion to dismiss for forum
non conveniens, a rejection based upon an analysis of codal provisions
inapplicable to dismissal for forum non conveniens.

44. Id. at 119.
45. La. Code Civ. P. art. 123 provides:
For the convenience of the parties and the witnesses, in the interest of justice,
a district court upon contradictory motion, or upon the court's own motion
after contradictory hearing, may transfer a civil case to another district court
where it might have been brought, provided, however, that no suit brought in
the parish of which the plaintiff is domiciled, and which court is otherwise a
court of competent jurisdiction and proper venue, shall be transferred to any
other court pursuant to this article.
46. La. Code Civ. P. art. 123 (official comment). One year after Trahan, in refusing
a writ in a case presenting the identical question, the Louisiana Supreme Court referred
to Trahan as determinative and added: "Applicant's remedy is by legislation." Chaney
At its next regular session, the Louisiana Legislature approved the Louisiana Law Institute
recommendation to add article 123, authorizing intrastate transfer to a more convenient
venue.
50. Symeonides v. Cosmar Compania Naviera, 433 So. 2d 281 (La. App. 1st Cir.
1983).
As originally adopted, the Louisiana Code of Civil Procedure authorized intrastate change of venue to insure a fair trial, but not for convenience. By contrast, no Louisiana code article or statute has dealt with forum non conveniens dismissal where the alternative forum is another state or foreign court. Thus while the conclusion is valid that the code impliedly rejected intrastate change of venue to a more convenient venue within the Louisiana court system, it cannot be said that the legislature has impliedly rejected the inherent authority of a court to decline to exercise jurisdiction in forum non conveniens circumstances.

No provision in the Louisiana Code of Civil Procedure nor any statute mandates a Louisiana court to exercise jurisdiction in every case in which it has authority to do so. Article 6 of the code speaks of jurisdiction over the person as the "legal power and authority of a court to render a personal judgment"; article 191 provides that "a court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law." In neither of these articles is there any mention of a duty to exercise that jurisdictional power in every case. When Louisiana's long-arm statute is used to obtain jurisdiction, the statute itself seems to authorize the court to decline jurisdiction in a forum non conveniens situation: "A court may exercise personal jurisdiction over a nonresident . . . ." More significantly, the judicial article of the 1974 Louisiana Constitution expressly authorizes the Louisiana Supreme Court to establish procedural rules: "the supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law . . . ." Since the forum non conveniens doctrine is procedural, and since there is no legislation dealing with dismissal on grounds of forum non conveniens, the Louisiana Supreme Court could adopt the forum non conveniens doctrine under its constitutional authority.

Had the Louisiana Supreme Court granted certiorari in Kassapas and reversed the court of appeal by deciding that Louisiana courts possess inherent authority to dismiss under the principle of forum non conveniens, it would not have been the first Louisiana court to do so. Nearly fifty years ago, without mentioning forum non conveniens, a Louisiana court of appeal declined to exercise jurisdiction under forum non conveniens circumstances. The court of appeal relied upon a Louisiana Supreme Court case decided twenty years earlier, Stewart v. Litchenberg. In a unanimous opinion the Louisiana Supreme Court endorsed without reservation the principle that there is no duty on the

52. La. Const. art. V, § 5.
53. Union City Transfer v. Fields, 199 So. 206 (La. App. 1st Cir. 1940).
54. 148 La. 195, 86 So. 734 (1920).
part of a Louisiana court to exercise jurisdiction under circumstances which today would be referred to as forum non conveniens. The plaintiff and defendant were both residents of Nebraska, and the action was "a purely personal one, transitory in character." The defendant was personally served in Louisiana, and the Code of Practice then in effect clearly conferred jurisdiction: "When the defendants are foreigners or have no known place of residence in this state, they may be cited wherever they are found."

The Louisiana Supreme Court considered private and public interest factors similar to those enumerated by the Supreme Court over twenty-three years later in *Gulf Oil Corp. v. Gilbert*:

Our opinion is that this provision of our law was intended for the benefit of the citizens of this state to enable them to assert their claims against foreigners or residents of other states, or those having no known residence or domicile, when found within the state, and to afford adequate relief in cases where, otherwise, they would have none under our law, and to save the necessity in such cases of having to resort to foreign tribunals for that purpose. We are also equally of the opinion that it was not intended to permit foreigners or citizens of other states, in no way owing allegiance to this state or its laws, to invoke the offices of our courts in determining controversies between them and other foreigners or nonresidents at their pleasure, when they have their adequate remedy in their own courts or those of their adversaries.

The court went on to point out that "under the rule of comity, between the several states, the courts of the one may, in their discretion, entertain jurisdiction over controversies, where personal citation is had within their territorial limits, between the citizens of other states, when it is within their power to do full and complete justice between the parties."

The Louisiana Supreme Court declined to dismiss the action because the defendant's only objection was that the court entirely lacked jurisdiction, not that it should not exercise its jurisdiction. However, the court's litany of circumstances in which a trial court could exercise discretion to decline to exercise jurisdiction could be taken from a current forum non conveniens decision: the court "may not be capable of doing full and exact justice between the parties because of a want of knowledge of the laws of another state;" "the defendant will be subjected to great
and unnecessary expense and inconvenience;'' or "the investigation will be surrounded with great difficulties, which can be avoided by suing at the defendant's domicile. . . ."60

In Union City Transfer v. Fields61 the Louisiana court of appeal faced a question identical to that in Stewart v. Litchenberg: whether a Louisiana court should entertain a suit by a nonresident plaintiff against a nonresident defendant temporarily in this state on a cause of action incurred in another state, when jurisdiction is obtained by personally serving the defendant with process in Louisiana. The court had no difficulty in interpreting Stewart "as leaving it to the discretion of the presiding judge as to whether or not he shall entertain jurisdiction."62 Finding no abuse of the discretion of the lower court in declining to exercise jurisdiction, the court of appeal affirmed.

The court in Kassapas could have reached a similar conclusion on the authority of Stewart v. Litchenberg: the trial judge had discretion to decline to exercise jurisdiction in a suit between foreigners on a foreign cause of action (particularly in admiralty), and there was no abuse of that discretion when the trial judge conditionally dismissed the action. Instead, the court of appeal followed Trahan down a wrong path and declined to dismiss without legislative sanction.

Unfortunately, a legislative solution to forum non conveniens has not come as quickly as it did with respect to intrastate transfer to a more convenient venue. When the Louisiana Law Institute proposed that article 123 be added to the Code of Civil Procedure to authorize intrastate transfer, the Louisiana Legislature responded promptly, the governor signed the bill, and the problem was solved within a very brief period. At the 1986 Regular Session of the Louisiana Legislature, a bill was introduced which in its original form would have solved the forum non conveniens problem.63 During committee hearings on the bill, supporters voiced concern that, unless the Kassapas decision was overturned, the state's several major ports would lose business to competitor Gulf of Mexico ports in other states.64 The bill would have added a new article 125 to the Louisiana Code of Civil Procedure:

Art. 125. Forum non conveniens: dismissal when convenient forum is outside the state

A. A district court, upon contradictory motion, or upon the court's own motion after a contradictory hearing, may dismiss

60. Id.
61. 199 So. 206 (La. App. 1st Cir. 1940).
62. 199 So. at 208.
64. See Minutes of meeting May 13, 1986, House Civil Law and Procedure Committee.
an action when the court determines that, for the convenience of the parties and witnesses and in the interest of justice, a more convenient forum exists outside the state.

B. In the interest of justice, the court may condition the order of dismissal to allow reinstatement of the action in the same forum in the event that the defendant refuses to consent to reasonable conditions which the court may impose to assure that the defendant will appear and defend in the foreign forum or in the event that the foreign forum refuses or is unable to assume jurisdiction over the parties or the cause of action.65

Had the bill passed as introduced it could have served as a model legislative solution to the forum non conveniens problem. However, it was amended to limit its application to maritime claims and to exclude certain enumerated circumstances, for example, when the plaintiff, at the time of the conduct or incident involved, was a bona fide resident alien, living in, or a citizen of, this state, or where Louisiana substantive law is to be applied. In any event, whether or not the amendments substantially weakened the bill became a moot issue, for the governor vetoed it as “completely antithetical to”66 article I, section 22 of the Louisiana Constitution.67 That constitutional provision guarantees that in Louisiana “all courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation or other rights.”68 Perhaps because the governor who vetoed the bill was then still in office, no forum non conveniens bill was introduced in the 1987 session of the Louisiana Legislature.

**Preclusive Effect of Earlier Dismissal**

Before discussing federal law/state law issues implicit in the *Kassapas* decision that a motion to dismiss for forum non conveniens may never

66. The complete text of the veto message, H.B. 602, Louisiana Legislature, Regular Session 1986, is as follows:
   This bill allows a district court to dismiss an action based on maritime activities for convenience of the parties and witnesses, although the court may have jurisdiction over the matter, thus necessitating the institution of the action in a foreign court. This bill embodies a broader concept of forum non conveniens than that which has been applied in this state in the past. The Code of Civil Procedure for many years has included only a forum non conveniens doctrine which permits the transfer, rather than dismissal, of an action to another court in the state, thus preserving the right of every person to access of our state courts as mandated by Article 1, Section 22 of our state constitution. This bill is completely antithetical to that mandate.
68. Id.
be granted in Louisiana, it should be noted that on remand the *Kassapas*
suit may be subject to dismissal on a plea of estoppel. An identical
claim filed in the U.S. District Court, Southern District of New York,
had earlier been dismissed on a forum non conveniens plea. The
dismissal was affirmed by the U.S. court of appeals in an unpublished
opinion:

> Defendants' contacts with the United States are far too in-
substantial to make one of them an "employer" subject to the
provisions of the Jones Act: See *Koupetoris v. Konkar Intrepid
Corp.*, 535 F.2d 1392, 1396 (2d Cir. 1976). Furthermore, the
district court did not abuse its broad discretion in determining
that the United States would be an inappropriate forum for this
action.

The preclusive effect of the New York judgment had not been considered
by the Louisiana trial court, and the issue may not be free from doubt.
The doctrine of forum non conveniens is procedural; hence the judg-
ment of the federal court in New York may not preclude the identical
later Louisiana action filed after the New York suit was dismissed. A
second suit in another federal district court would probably be dismissed
as barred by the earlier forum non conveniens dismissal. However, in
a somewhat analogous situation, the U.S. Supreme Court has held that
the dismissal of a F.E.L.A. suit on the ground of forum non conveniens
by an Illinois state court (there was a more convenient state forum at
the city in Michigan where the accident had occurred) did not preclude
the U.S. District Court of Illinois from denying a motion to transfer
a second suit on the same cause of action to the federal court in
Michigan pursuant to 28 U.S.C. § 1404(a). The Supreme Court reasoned
that there are many variables in every case which might affect the
decision by a state court to exercise or to decline to exercise jurisdiction,
as contrasted to a federal court. Among the variables are the public

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72. See *Pastewka v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977), holding that a New
York federal court's judgment dismissing a seaman's suit on forum non conveniens
precluded plaintiffs from relitigating the issue in a later suit in the U.S. District Court
Cir. 1981). A U.S. district court in Arizona dismissed a suit on forum non conveniens
grounds. Thereafter, plaintiff filed the same claim in a U.S. district court in Missouri.
The Eighth Circuit held that plaintiff could relitigate the forum non conveniens issue in
the Missouri district court; there were such differences in the underlying facts that con-
sideration of the convenience of a Missouri forum was not foreclosed.
interest factors set forth in *Gulf Oil Corp. v. Gilbert,* such as docket congestion.

A recent opinion of the U.S. Court of Appeals for the Fifth Circuit considered the issue preclusion question in a case which could be the subject of an entire article. The opinion could be described as a single-judge majority, for the concurrence is on much narrower grounds than is the "majority opinion," and there is a short but vigorous dissent. The court affirmed a judgment of the U.S. district court in Houston, enjoining plaintiff from prosecuting a suit filed in state court in Houston after dismissal by the Federal district court on forum non conveniens grounds of an earlier suit on the same claim.

The only conclusion which can be drawn from this cursory review of the estoppel/issue preclusion decisions is that it is not clear that the plaintiff in *Kassapas* would be bound in a Louisiana state court by the judgment, albeit a final judgment, of the federal court in New York dismissing his claim on forum non conveniens grounds.

**MUST STATE COURTS APPLY FEDERAL FORUM NON CONVENIENS LAW IN MARITIME CASES?**

The *Kassapas* opinion does not discuss the contention raised in the briefs of counsel for defendants and amicus curiae that federal maritime law, rather than state law, should have governed the forum non conveniens issue, since the basis for the actions was the federal Jones Act and general maritime law. However, the court impliedly rejected the argument: "We note initially that the device of forum non conveniens is procedural." Indeed, the U.S. Supreme Court case relied upon by the Louisiana court of appeal holds squarely that, because the doctrine of forum non conveniens is procedural, a state is free to apply it to an action under the Federal Employers Liability Act (F.E.L.A.), or to decline to do so. The Jones Act, one of the bases of plaintiffs' claims in *Kassapas*, is a "statutory brother" of F.E.L.A. In accepting the substantive/procedural distinction as a basis for applying state forum non conveniens law, the *Kassapas* opinion ignored a cogent argument that uniformity is especially desirable, if not essential, in maritime actions.

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75. Exxon v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987), cert. granted, No. 87-505 (U.S. Nov. 16, 1987).
76. See amicus brief filed on behalf of International Shipping Federation, p. ix.
77. *Kassapas*, 485 So. 2d at 566.
In *Exxon v. Chick Kam Choo*, discussed earlier for its estoppel/res judicata holding, Judge Thomas Gee, the author of the "one vote majority" opinion, deals at length with the question of whether a state court can apply state forum non conveniens law to a maritime case. Plaintiff's husband, a shipwright, was killed in an accident aboard a vessel in Singapore. Plaintiff's first suit against the vessel owner in the U.S. district court in Houston was dismissed on defendant's forum non conveniens motion. The same claim was filed thereafter in state court in Houston. The vessel owner then sued in the U.S. district court to enjoin further prosecution of the state court action. The decedent's widow argued that state law applied to the forum non conveniens issue in the state court, precisely the holding of the Louisiana court of appeal in *Kassapas*. It is an open question whether Texas, through its "open-forum" law, joins Louisiana as courthouse to the world, "hearing all cases from anywhere, regardless of how convenient or inconvenient to court, witnesses, or parties."

Rejecting a reverse *Erie* doctrine argument, Judge Gee concluded that even if forum non conveniens is procedural, it is preempted by federal maritime law to the extent of any conflict. Forum non conveniens has its roots in and is a characteristic feature of maritime law. There is a significant need for uniform application of the doctrine by all courts in the United States, state as well as federal. Thus if Texas law precludes application of the doctrine of forum non conveniens, Texas law cannot be applied to a maritime case in a Texas court. Chief Judge Clark concurred in the result, but opined that the case does not implicate Texas law; the only issue was the enforceability of the federal court's final judgment in the plaintiff's first suit, enjoining the prosecution of the claim in any court in the United States. Judge Reavley dissented: "It is for the Texas court to decide its own forum convenience and to identify the issues subsidiary to that determination." Of particular interest is Judge Gee's comment about the Louisiana *Kassapas* opinion, the focus of this article: "As we have shown, *Kassapas* was wrong. We are concerned that two major maritime states in this Circuit appear to be willing to disregard federal forum non conveniens doctrine in maritime cases brought to their courts."

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81. 817 F.2d 307, 314 (5th Cir. 1987).
82. Vernon's Civil Practice & Practice Code § 71.031.
83. *Exxon* 817 F.2d at 314 (5th Cir. 1987).
85. *Exxon*, 817 F.2d at 325.
86. Id. at 324.
MUST FEDERAL COURTS APPLY STATE FORUM NON CONVENIENS LAW IN DIVERSITY CASES?

As long as Louisiana courts decline to apply the forum non conveniens doctrine absent legislation and as long as legislative efforts fail, astute plaintiff attorneys who file suits with potential forum non conveniens problems will not choose a federal forum but instead will seek the shelter of a Louisiana state court. However, except for F.E.L.A. and Jones Act suits which are not removable,87 federal question88 and diversity89 jurisdiction cases subject to forum non conveniens motions will likely be removed to federal court.90 Other state law claims will be filed directly in federal court based upon diversity of citizenship jurisdiction. If a motion to dismiss on forum non conveniens grounds is filed in a U.S. district court in Louisiana in a diversity case, the question arises whether the federal court should apply Louisiana law, which precludes such a dismissal, or federal law, which permits it. That issue has not yet been resolved by the U.S. Supreme Court. In each of the four cases in which the Court has dealt with forum non conveniens, the applicable state law was virtually identical to federal law. Thus the same result would have been reached in each case under either federal or state law. Therefore, the Court left unresolved the question of whether under Erie state or federal law of forum non conveniens applies in a case in which federal jurisdiction is based upon diversity of citizenship.91

Unfortunately, the U.S. Fifth Circuit Court of Appeals has not exhibited the same commendable restraint; in an en banc opinion it recently “decided” the federal law/state law question and numerous other forum non conveniens issues not involved in the case.92 Pan American World Airways (Pan Am) and the United States of America were defendants in numerous damage suits resulting from a plane crash near New Orleans in July of 1982; both conceded liability. Jurisdiction was based upon diversity of citizenship and the Federal Tort Claims Act.93 Plaintiffs in the cases in question, survivors of Uruguayan citizens killed in the crash, were domiciled in Uruguay. Pan Am moved to dismiss for forum non conveniens. The United States could not and did

87. See supra note 20 and accompanying text.
92. In re Air Crash Disaster Near New Orleans, Louisiana, 821 F.2d 1147 (5th Cir. 1987).
not move for forum non conveniens dismissal, and the United States could not be sued in Uruguay, the alternative forum proposed by Pan American. Thus Uruguay was in fact not an alternative forum. Application of the doctrine of forum non conveniens “presupposes at least two forums in which the defendant is amenable to process.”94 The author of this article, the trial judge to whom Pan Am’s forum non conveniens motion was presented, used two minutes and three sentences to deny the motion: there was no alternative forum. The Fifth Circuit ultimately reached the same result: “[T]his case was properly tried in the United States because no other forum could entertain the plaintiffs’ actions against all of the defendants.”95 Before deciding that fundamental issue, the only forum non conveniens issue involved in the case, the court discussed at length the question of whether state or federal forum non conveniens law should apply in diversity cases, and concluded that federal law applies.

Although the case involved a plane crash on land, the opinion uses a footnote to “expressly disapprove of and overrule our Jones Act and general maritime caselaw [more than fifteen published opinions] that utilizes a modified forum non conveniens analysis.”96 Would that the court had heeded Judge Garwood’s concern in a partial dissent, a concern equally applicable to the state or federal law “non-issue.” “It would be far preferable . . . to determine [such issues] . . . in a case where the question is squarely presented and makes a difference to the result.”97

Not surprisingly, within a matter of months after the Air Crash decision, the Fifth Circuit considered an admiralty case in which the question whether a modified forum non conveniens analysis should be applied in admiralty was squarely presented and could have made a difference.98 The panel understandably considered itself bound by the footnote dicta “expressly . . . overru[l]ing” the circuit’s prior admiralty forum non conveniens decisions: “Bound by the decision of the en banc court that there is no need for a different analysis in maritime cases, the outcome of this case is predicated upon the dictates of Air Crash.”99 The rejection of a different approach for resolving forum non conveniens issues in maritime cases may be correct. Those who believe in the adversary system will argue that we may never know, for the Fifth Circuit, usually a leader in maritime law, may never consider the issue

95. In re Air Crash, 821 F.2d at 1168.
96. 821 F.2d at 1164 n.25.
97. 821 F.2d at 1180.
99. Id. at 877.
in a case in which it could make a difference to one or more of the
parties.

In the Air Crash case, neither party raised the federal law/state law
issue in briefs: plaintiff, probably because the presence of the United
States as a defendant meant there was no alternative forum, which
would defeat Pan Am's forum non conveniens motion under any forum
non conveniens law; defendant, probably because Louisiana would not
apply the doctrine of forum non conveniens in any event. Hopefully,
if a case is presented in which the issue is briefed and argued because
it makes a difference to the parties, the Fifth Circuit will reconsider
the issue in an adversary setting.

While the U.S. Supreme Court has not answered the question, and
the Fifth Circuit strained to reach it in the Pan Am air crash case, the
United States Court of Appeals for the Eleventh Circuit recently held
squarely that federal law, not the state's forum non conveniens law,
applies in diversity cases. The state substantive law to be applied under
Erie was that of Florida, and Florida law would have precluded dismissal
under forum non conveniens because one party was a resident. The
court conceded that application of federal rather than state law altered
the outcome of the case, for it consigned the Costa Rican plaintiffs to
Costa Rica for trial. Nevertheless, forum non conveniens "is a rule of
venue," a manifestation of the court's inherent power to protect the
integrity of its process, to prevent it from becoming an instrument of
abuse. Therefore, the district court's dismissal on forum non conveniens
grounds did not violate the Erie rule requiring application of substantive
state law.

Apparently, the plaintiffs did not seek U.S. Supreme Court review
of the Eleventh Circuit's decision. Had they done so, the Court may
well have taken the case. The issue under Erie is bound to recur, and
it is submitted that the circuit's reasoning is seriously flawed, especially
in a case filed in state court and removed to federal court. If the state
court which plaintiff chose would not dismiss on forum non conveniens
grounds, should a U.S. district court do so when the case is removed
there by the defendants? Did Congress intend when it authorized removal
that a suit which would have proceeded to trial on the merits in the
state court would instead be dismissed on the basis that the plaintiff
who filed suit in state court is "abusing the process" of the federal
court to which his suit has been removed against his will?

102. Sibaja, 757 F.2d at 1219.
It has been suggested that, since the effect of a forum non conveniens dismissal is often to alter the applicable substantive law, a federal diversity court should not dismiss a case that the state court, applying state law, would retain, particularly since the result is to override state choice of law and jurisdiction rules. In a diversity case, a federal court's jurisdiction in a federal sense is based upon diversity of citizenship. But its jurisdiction in the broad sense, its power to adjudicate as to the defendant and the lawsuit, has its foundation in the power of a state court of the forum state. If a state court in the forum state would have general jurisdiction over the defendant, then so too would a United States district court in a diversity case. The federal court should not decline to exercise jurisdiction in a diversity case when the forum's state court would exercise it. In Louisiana, of course, the issue assumes unusual significance. If federal courts sitting in Louisiana must under Louisiana law decline to consider forum non conveniens motions, then federal courts in Louisiana are exposed to an inundation of actions which, if filed in some other state, would be dismissed on forum non conveniens grounds.

In the cases resulting from the Union Carbide gas plant disaster in Bhopal, India, discussed in detail hereafter, the federal law/state law issue is not even discussed in either the district court or court of appeals opinions, perhaps because there may be no difference between the federal law and that of the states in which the many suits were brought. If state law governs forum non conveniens in federal diversity jurisdiction cases, the Bhopal cases would have had to be tried in the United States had they been filed in, or removed to, federal court in Louisiana, as well they could have been, since Union Carbide conducts very extensive business activities in Louisiana.

Kassapas Should Be Overruled

In most jurisdictions in the United States the doctrine of forum non conveniens provides courts with the tool needed to prevent serious inequities to defendants, especially business entities which conduct worldwide operations and which therefore are subject to suit almost everywhere. The concern is that unless Louisiana courts are provided with the same forum non conveniens tool, Louisiana will become the dumping ground for suits of citizens of other states and nations. One result will

104. See infra notes 116 and 120.
be that business interests, which already tend to shun the state because of its litigation climate, will continue to avoid Louisiana. If our economic climate does not improve, there may be no public funds to enforce Louisiana’s constitutional mandate that “[a]ll courts shall be open.”

The most notorious forum non conveniens litigation of all time is that involving the disaster at Union Carbide’s gas plant in Bhopal, India, the worst industrial disaster in history. Over 2000 people were killed, over 200,000 injured. Within three days of the accident, the first suit was filed in a United States district court, ostensibly on behalf of thousands of Indians—a tribute to the mobility and ingenuity of American lawyers. Within a brief period, 144 additional actions were filed in various federal courts in the United States, involving approximately 200,000 plaintiffs. The federal judicial panel on multidistrict litigation transferred all of the cases to the Southern District of New York for consolidated pre-trial proceedings. In a detailed opinion, the district court granted Union Carbide’s motion to dismiss the consolidated actions on the grounds of forum non conveniens. The court held that the private interest factors set forth in Piper and Gilbert “weigh[ed] heavily toward dismissal” and that the public interest factors “also favor[ed] dismissal.” The United States Court of Appeals for the Second Circuit affirmed the district court’s dismissal but modified some of the conditions placed upon mover by the trial court. An application to the Supreme Court for writs was denied.

Should a similar disaster occur in the future and should jurisdiction be obtained against the defendant in a Louisiana state court, Louisiana courts and juries would be burdened with the multitude of suits which might ensue. The choice of law might be that of the situs of the disaster, but the trials would be before Louisiana courts and at the expense of Louisiana taxpayers. Such a situation could result if citizens of a foreign nation in which a disaster occurs bring suits against a corporation organized under the law of that nation, but conducting business operations and owning property in Louisiana. That scenario is not unlikely to occur, given the international scope of many manufacturing opera-

107. La. Const. art. 1, §22.
tions. If removal to federal court were not possible (for example, if a local defendant were joined) Louisiana state courts would be inundated with claims. If the cases were removable to federal court, and the U.S. Supreme Court ultimately decides that state forum non conveniens law controls in diversity cases, federal courts in Louisiana will bear the burden of a multitude of cases in which this nation has no direct interest.

As should be evident from the decisions already discussed, the United States Court of Appeals for the Fifth Circuit has been a fertile field for interesting forum non conveniens cases. Understandably, admiralty cases, and particularly cases involving offshore accidents, are the most numerous forum non conveniens cases in the circuit. The three states which comprise the circuit border the Gulf of Mexico, the world’s busiest offshore oil and gas area. Many of the large corporations which engage in offshore drilling and production, and hundreds of subcontractors, conduct world-wide operations from bases in Louisiana and Texas. In the federal courts in the Fifth Circuit, the doctrine of forum non conveniens has shielded these corporations from hundreds of personal injury and wrongful death claims having no connection with the United States, filed on behalf of foreign plaintiffs by local attorneys seeking the advantage of liberal liability rules and generous juries. If Louisiana fails to make the doctrine of forum non conveniens available to its courts, many such cases may find their way to the state courts. This would be to the benefit of foreign plaintiffs, but to the detriment of the Louisiana court system, business entities located in Louisiana, and the local economy.

Problems with forum non conveniens arise not only in the international context, but in interstate circumstances as well. Indeed, the ovular federal case, *Gulf Oil Corp. v. Gilbert*, was an interstate case. The Supreme Court determined that the suit in the federal court in New York should be dismissed: the fire which led to the suit occurred in Virginia, and the case should be tried there. There are many such cases filed in states other than the one where the events which are the basis

115. Volyrakes v. M/V Isabelle, 668 F.2d 863 (5th Cir. 1982), referred to earlier at supra note 38 as a “companion” case to the state court case of Symeonides v. Cosmar Compania Naviera, 433 So. 2d 281 (La. App. 1st Cir. 1983), is a good example of a typical admiralty case. Numerous cases are concerned with offshore accidents involving oil and gas exploration and production. See, e.g., DeOliveira v. Delta Marine Drilling Co., 707 F.2d 843 (5th Cir. 1983), and cases cited therein.
117. *Gulf Oil Corp. v. Gilbert* has been referred to earlier in this article as the “seminal federal case on forum non conveniens.” See supra note 44 and accompanying text. The feminine equivalent is used here, as suggested by Fifth Circuit Judge John R. Brown, “in the interest of fair play and equality of sexes.” United States v. Lemaire, 712 F.2d 944, 946 (5th Cir. 1983).
of the claim occurred. In some of these cases, plaintiff’s motive is to inconvenience or even harass the defendant. On the other hand, many are based upon choice of law decisions by plaintiff’s counsel, often involving favorable statutes of limitation in the state of the selected forum. For example, Mississippi’s six year statute of limitations for personal injury claims has caused the state to be referred to as “a ‘national dumping ground’ for ‘stale lawsuits.’” Similarly, New Hampshire’s six year statute of limitations for libel actions made it the only state in which Kathy Keeton could sue Hustler Magazine in a case which found its way to the U.S. Supreme Court. The basic issue before the Court was personal jurisdiction. The argument that due process was implicated by choice of law concerns and the applicability of New Hampshire’s lengthy statute of limitations to a claim for nationwide damages was rejected by Justice Rehnquist: “Petitioner’s successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations.” The point to be emphasized for purposes of this article is that increased multi-state activity of potential defendants results in personal jurisdiction susceptibility in many states and legitimate forum shopping by plaintiffs. Interstate forum non conveniens cases will inevitably become more prevalent.

The doctrine of forum non conveniens has been severely criticized and its historical foundation disputed, except in admiralty and equity. However, the doctrine now appears well-entrenched in federal law and in most state jurisdictions. Curiously enough, while Louisiana’s two gulf coast neighbors have not gone so far as to reject the doctrine, as Louisiana has, the supreme courts of both Texas and Mississippi seem somewhat in doubt.

Two recent Texas court of appeals decisions affirmed district court dismissals on forum non conveniens grounds, one a wrongful death interstate case, the other an international maritime claim. However, in each case the Texas Supreme Court took action, making it clear that the Texas open forum law may prohibit Texas courts from dismissing

121. Id. at 779, 104 S. Ct. at 1480.
123. McNutt v. Teledyne Indus., Inc., 693 S.W.2d 666 (Tx. App. 5th Dist. 1985).
125. Vernon’s Civil Practice & Remedies Code § 71.031.
certain actions on the basis of forum non conveniens. In the international maritime case, the Texas Supreme Court declined a writ application but held specifically that the dismissal of the suit was justified on other grounds: "[T]hat part of [the court of appeals'] opinion pertaining to . . . forum non conveniens is dicta. Thus the applicability of forum non conveniens . . . is an open question."126 In the interstate case, the Texas Supreme Court granted a writ of error and thereafter vacated the judgment as moot after the parties settled.127

The Mississippi Supreme Court affirmed a forum non conveniens dismissal by a chancery court in 1943.128 But twenty-five years later, that court, in refusing an interlocutory appeal from a trial judge's denial of a forum non conveniens motion, left open "the right to review on direct appeal the so-called doctrine of forum non conveniens in the light of section 24, Mississippi Constitution."129

FORUM NON CONVENIENS DOCTRINE SHOULD BE UNIFORMLY APPLIED

With respect to personal jurisdiction issues, federal due process standards enunciated by the U.S. Supreme Court have for the most part effectively supplanted state rules, restoring a degree of uniformity between federal and state law, among the various state laws, and in international cases. In contrast, the lack of uniformity with respect to forum non conveniens has produced anomalous, even bizarre results:

The same plaintiff has his maritime personal injury claim dismissed by a federal court in New York but welcomed by a Louisiana state court.130

The suit arising from the death of a Greek seaman in a vessel accident is dismissed by a federal court and "transferred" to Greece;131 a fellow seaman injured in the same accident recovers under federal statute in a Louisiana state court.132

A suit which would have been tried in a Florida state court (where it was filed (Florida forum non conveniens law would have precluded dismissal) is instead "transferred" to Costa Rica by a federal court to which it was removed by the defendant on the basis of diversity of citizenship.133

130. See supra notes 21 and 69.
131. See supra note 39.
132. See supra note 40.
133. See supra notes 101 and 102.
A U.S. district court, granting a motion to dismiss on forum non conveniens grounds, not only dismisses the action filed in federal court but also enjoins the plaintiff and counsel from prosecuting the claim in the courts of any state.\textsuperscript{134}

On the petition of an English corporation, an English court enjoins the defendant, an English resident, from prosecuting a claim against the corporation in a state court in Pennsylvania: "The natural forum is England beyond any doubt... Once the English court decides that the dispute should be tried in England and not in the United States, then it is open to the court to issue an injunction against [the defendant] restraining him from continuing his proceedings in the courts of the United States."\textsuperscript{135}

A uniform set of forum non conveniens principles would tend to eliminate most of the anomalies produced by the current situation and would reduce the inter-court tensions illustrated by the foregoing examples, tensions which damage international, federal/state, and state/state relations. The benefits to be achieved by uniformity in the field of forum non conveniens far outweigh the potential negative impact upon state sovereignty and federalism.

There are several methods through which uniformity could be achieved, at least partially. In the next year after the Supreme Court decided in \textit{Gulf Oil Corp. v. Gilbert}\textsuperscript{136} that federal courts have inherent authority to dismiss cases over which they have jurisdiction if venue is inappropriate, Congress enacted 28 U.S.C. 1404(a), which legislatively supersedes the doctrine of forum non conveniens when it is possible to transfer to a more convenient federal forum. Thus forum non conveniens is now applied in United States district courts only when the proposed alternative forum is a state or foreign court.\textsuperscript{137} "[T]he harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by the provision in § 1404(a) for transfer."\textsuperscript{138} A transfer under § 1404(a) has no effect upon choice of law issues; in diversity jurisdiction cases, the transferee court must apply the law and policy of the transferor state.\textsuperscript{139} A uniform reciprocal state statute or interstate compact could authorize transfer from an inconvenient state court to a court of a state of more appropriate venue.

\begin{thebibliography}{9}
\bibitem{134} Exxon v. Chick Kam Choo, 817 F.2d 307 n. 1 (5th Cir. 1987).
\bibitem{136} See Cowan v. Ford Motor Co., 713 F.2d 100 (5th Cir. 1983).
\bibitem{139} See Cowan, 713 F.2d 100.
\end{thebibliography}
This would limit forum non conveniens dismissals in state courts to cases in which the appropriate forum is in a foreign nation. It would also eliminate some potential statute of limitations problems, which are solved under forum non conveniens by orders of dismissal conditioned upon the waiver by the defendant of any statute of limitations defense.

At least in theory, transfer between state courts would not affect choice of law issues if the authorized statute or compact required (as it likely would) that the transferee court apply the law and policy of the transferor state. As a practical matter, regardless of a statutory mandate that the law of the transferor state would "go with" the case, choice of law might be affected by an interstate state court transfer, for the transferee court would be placing its gloss on the proper interpretation of the law of the transferor state as to conflicts of laws issues. If the statutory authorization for state court interstate transfer were to include a requirement that the law of the transferor state would remain applicable, plaintiffs would not be deterred from shopping for a forum with favorable laws such as lenient statutes of limitations. But such legitimate forum shopping is inherent in a federation of sovereign states and bears no resemblance to selection of an inconvenient forum for vexatious motives.\(^{140}\)

There are two methods by which the United States Supreme Court may in the future contribute to uniformity in the application of forum non conveniens doctrines in state courts. In maritime cases, the court could adopt Judge Gee's\(^ {141}\) preemption approach, in effect "federalizing" forum non conveniens doctrine to be applied by state courts in maritime cases. Second, in an especially egregious non-maritime case, the Supreme Court might decide that, even though a state court may have personal jurisdiction over a defendant, venue may be so inconvenient that the exercise of jurisdiction would be so fundamentally unfair that it would constitute a violation of due process.\(^ {142}\)

**CONCLUSION**

The litigation world has shrunk, just as the world has shrunk in other respects. News now travels instantaneously; plaintiff lawyers and lawsuits are never far behind. The world has also become a single marketplace. One result is that many products are manufactured by

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140. See supra note 121 and accompanying text.
141. See supra note 83 and accompanying text.
corporations which do business all over the world and are subject to suit in many states of the United States as to claims arising elsewhere. The availability of trial by jury and the prospect of large awards result in importation to the United States of many foreign causes of action. The forces which drove the development and acceptance of the doctrine of forum non conveniens in federal courts and most of the other states are equally applicable to Louisiana. Because Louisiana is a center of maritime activities, Louisiana courts are called upon more than most to deal with cases which fit the forum non conveniens mold. In the absence of remedial legislation, the Louisiana Supreme Court should reaffirm the principle that a grant of jurisdiction does not require the court to exercise it in inappropriate circumstances.

The principle of forum non conveniens should be available to Louisiana courts; otherwise, Louisiana’s taxpayers, courts and juries are likely to be burdened with trials in which they have no interest. If Louisiana remains as one of the few “welcome centers” inviting foreign plaintiffs to try foreign causes of action in the United States, its efforts at business development, especially in the maritime field, are bound to suffer.

The principle of forum non conveniens and the rules governing its application should be made uniform to the extent possible, reserving discretion in the trial courts to deal with countless varieties of circumstances in particular cases. Relaxed personal jurisdiction standards and increased international trade will result in more forum shopping “on the margin.” As a result, the doctrine of forum non conveniens will become even more significant, and uniformity of application of the doctrine will become even more desirable if not practically essential. In any event, Louisiana would do well to reweave its “litigants’ welcome mat,” restricting it to causes of action which bear some relationship to the state, and dismissing actions in which its citizens have no interest and which have no nexus to Louisiana, under the doctrine of forum non conveniens.
